



REPUBLIC OF KENYA



Morgan Omusundi t/a Morgan Omusundi Lawfirm v Nanjo & another (Probate & Administration 9 of 2022) [2025] KEHC 2091 (KLR) (14 February 2025) (Ruling)

Neutral citation: [2025] KEHC 2091 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION 9 OF 2022
RN NYAKUNDI, J
FEBRUARY 14, 2025**

IN THE MATTER OF ORDER 51 RULE 1 AND 52 OF THE CIVIL PROCEDURE RULES

AND

**IN THE MATTER OF SECTION 48 AND 51 OF THE ADVOCATES ACT
(CAP 16 LAWS OF KENYA) AND THE ADVOCATES (REMUNERATION)**

(AMENDMENT) ORDER 2014

AND

**IN THE MATTER OF ELDORET HIGH COURT P&A NO. 14 OF 2017
ELDORET HIGH COURT ESTATE OF RODA MAKUNGU DANIEL**

BETWEEN

MORGAN OMUSUNDI T/A MORGAN OMUSUNDI LAW FIRM ... APPLICANT

AND

SARAH LYDIA NANJO 1ST RESPONDENT

MARY ALIVIDZA MAKALE 2ND RESPONDENT

RULING

Representation:

M/s Morgan Omusundi Law Firm Advocates

1. What is pending before me for determination is a Notice of Motion Application dated 11th March 2022 where the Applicant is seeking the following orders:



- a. That the Advocate-client bill of costs as between the Applicant and the Respondents be taxed and allowed by the taxing master of this court with respect to; Eldoret High Court P&a No. 14 of 2017 Eldoret High Court Estate Of Roda Makungu Daniel
 - b. Costs of this application be provided for.
2. The Application is based on the grounds on the face of it among others:
- a. That the Applicant lodged and handled proceedings in the above mentioned matter on behalf of the respondents who gave instructions.
 - b. That the respondents have neglected, refused and/or ignored to pay the Applicant's legal fees in full or at all and disbursements, despite demands being made.
3. The Application is supported by the Annexed Affidavit dated 11th March 2022 sworn by Morgan Omusundi where he avers as follows:
- a. That I am aware that the Applicant herein was duly instructed on 1st October 2014 by the respondents/petitioners lodge the succession cause of latter In the Matter of Eldoret High Court P&a No. 14 of 2017 Eldoret High Court Estate Of Roda Makungu Daniel.
 - b. That attached are copies of the pleadings/forms in the above said matter confirming the same.
 - c. That it is incumbent and/or was mutually agreed that the Respondents would pay the Applicant's legal fees and disbursements due from and arising out of the said case.
 - d. That the respondents have however neglected, ignored, failed and/or refused to pay the applicant fees on scale.
 - e. That in the premises, it is fair, just and expedient that the Advocate-Client Bill of costs file herewith taxed and allowed to enable the Applicant gain costs and to recover the expenses incurred in conducting/handling the said matter.
 - f. That I make this affidavit in support of the application filed herewith and the bill of costs taxing the respondent.

Analysis and Determination

4. I have carefully read and considered the Application by the Applicant and there is only one issue manifest for determination i.e. Whether the Application is merited.

Whether the Application is Merited

5. A reading of the [Advocates Act](#) provides for two (2) ways in which an applicant may recover its costs. These are under Section 48 and Section 51 (1) of the [Advocates Act](#) which I have found it necessary to reproduce to show the different approaches of recovery of costs by an advocate against his client.
6. Section 48 of the [Advocates Act](#) provides as follows: -

“(1) Subject to this Act no suit shall be brought for the recovery of any costs due to an advocates or his firm until after the expiry of one month after a bill of such costs, which may be in summarized form, signed by the advocate or partner in his firm, has been delivered or sent by registered post to the client, unless there is reasonable cause, to be verified by affidavit filed with the plaint, for believing that the party chargeable therewith is about to leave Kenya or abscond from



the local limits of the Court's jurisdiction, in which event any action may be commenced before the expiry of the period of one month.

7. Under Section 49 of the said Act, it is provided as follows: -

“Where in the absence of an agreement for remuneration made by Section 45, a suit has been brought by an advocate for the recovery of any costs and a defence is filed disputing the reasonableness or quantum thereof, no judgment shall be entered for the plaintiff, except by consent, until the costs have been taxed and certified by the taxing officer.”

8. I take cognizant note that the principles of law applicable in relation to Advocate-Client Bill of Costs after the same has been taxed are clear. In this regard, section 51(2) of the *Advocates Act* provides that:

The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.

9. In the decision of Kamau J. in the case of Lubulellah & Associates Advocates Vs N K Brothers Limited [2014] eKLR, the Learned Judge states that:

“The law is very clear that once a taxing master has taxed the costs, issued a Certificate of costs and there is no reference against his ruling or there has been a ruling and a determination made and not set aside and/or altered, no other action would be required from the court save to enter judgment. An applicant is not required to file suit for the recovery of costs. The certificate of costs is final as to the amounts of the costs and the court would be quite in order to enter judgment in favour of the Applicant against the Respondent herein for the taxed sum indicated in the Certificate of Taxation ...”

10. On interest chargeable by an advocate, Rule 7 of the Advocates Remuneration Order states as follows: -

An advocate may charge interest at 14% per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full.

11. I note that the Applicant herein opted not to file a suit for recovery of its costs as provided for under Section 48 of the *Advocates Act*. It applied for taxation of its Bill of Costs in accordance with Section 51(2) of the said Act. The Applicant was therefore under no obligation to comply with the provisions of Section 48 of the Act by filing a suit for the recovery of its costs against the Respondents herein.

12. Furthermore, this court has jurisdiction under Section 51(2) of the *Advocates Act* to make any order that it deems fit. Entry of judgment and award of interest at court rates is within the ambit of what this court can do. With this I am guided by the decision in the case of Andrew and Steve Advocates Vs Maureen Onsongo [2022] eKLR where the Court held that:

19. It is evident that Section 51(2) of the *Advocates Act* confer upon the court jurisdiction to make such order as it may deem fit in the matter before it and an order that judgment be entered for the sum certified to be due including costs.

13. In light of the foregoing, the application is merited and the same is allowed in terms of prayer (1)

14. There shall be no order as to the costs



15. The file be transferred to the Deputy Registrar for Taxation of the Advocate-Client Bill of Costs

16. It is so ordered

DATED AND SIGNED AT ELDORET VIA CTS THIS 14TH DAY OF FEBRUARY, 2025

.....

R. NYAKUNDI

JUDGE

